

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

<b>JOHN W. PEROTTI,</b>	)	<b>CASE NO. 1:04CR276</b>
	)	<b>(1:08CV2478)</b>
<b>Petitioner,</b>	)	
	)	
<b>v.</b>	)	<b>JUDGE DONALD C. NUGENT</b>
	)	
<b>UNITED STATES OF AMERICA,</b>	)	
	)	
<b>Respondent.</b>	)	<b><u>MEMORANDUM OPINION</u></b>
	)	<b><u>AND ORDER</u></b>
	)	
	)	

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This matter is before the Court pursuant to Petitioner's Motion for an Evidentiary Hearing on Petitioner's Motion to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody pursuant to 28 U.S.C. § 2255. (Docket #216). For the reasons set forth below, Petitioner's Motion for an Evidentiary Hearing is DENIED.

**Background**

Petitioner was sentenced to 210 months' imprisonment after a Federal grand jury convicted him of being a felon in possession of a firearm. The Sixth Circuit affirmed his conviction and sentence. On January 6, 2010, Petitioner filed this motion requesting that the Court conduct an evidentiary hearing. Petitioner raises five grounds for relief, none of which entitle him to an evidentiary hearing.

### **Discussion**

The Court is required to hold an evidentiary hearing “unless the motion and files and records of the case show conclusively that the movant is not entitled to relief.” 28 U.S.C. § 2255. While Petitioner alleges facts warranting relief, the existing record clearly resolves these allegations. Petitioner’s claims lack merit.

The Sixth Circuit has previously ordered an evidentiary hearing, even when the Government has obtained an affidavit from Petitioner’s counsel. *Smith v. United States*, 348 F. 3d 545 (6<sup>th</sup> Cir. 2003). However, this is only when facts are left undeveloped. Petitioner has failed to present evidence to support his claim that counsel was ineffective and that he suffered prejudice as a result of the performance of counsel. The record in this case shows active and appropriate representation by Counsel and there is no evidence that any of the alleged actions or inactions of Counsel would have resulted in a different outcome in this case. While Petitioner makes several arguments regarding deficiencies in the performance of Counsel, the Court has conducted a careful and thorough review of the record and the materials submitted by the Parties and finds no basis for his claims. Petitioner’s claims are without merit and there is no need for an evidentiary hearing.

**Conclusion**

For the reasons set forth above, no evidentiary hearing is required on Petitioner's Motion to Vacate, Set Aside or Correct Sentence filed pursuant to 28 U.S.C. § 2255, and Petitioner's Motion for a Hearing (Docket #216) is DENIED.

IT IS SO ORDERED.

DATED:

June 1, 2011

  
DONALD C. NUGENT  
United States District Judge